

PROHIBITING DISCRIMINATION BASED ON SEX

1415

(No.1 May 2015)

[Government Code § 12940 \(h\)](#)

[Government Code § 19702 \(a\)](#)

No person shall be subject to, and it is against federal and State law, and the Department policy prohibits any employee to sexually harass another. All CAL FIRE permanent employees, contractors, seasonal employees, volunteers, paid on-call fire fighters, Schedule C employees, and committee members are precluded from, and protected against sexual harassing behavior. These protections and restrictions apply to all interactions between CAL FIRE personnel and between employees of the Department and other governmental employees, vendors, program participants and members of the public encountered during or because of work.

DEFINITION OF SEXUAL HARASSMENT

Sexual harassment is a form of discrimination that deprives the recipient of equal employment opportunities. Sexual harassment may be overt or subtle. Behavior that is tolerated in a social setting may not be appropriate in the workplace. Sexual harassment complaints may be substantiated by the complainant's perception of the situation, and may include conduct that is sexually based, even if the conduct is not overtly sexual. This may include hostile behavior such as bullying, threats made in a joking manner, and conduct that is perceived as threatening by one gender, even if it is not perceived as such by the other.

The California Fair Employment and Housing Act (FEHA) defines sexual harassment as unsolicited and unwelcome sexually based behavior when:

- Submission to or toleration of the behavior is either explicitly or implicitly understood as a term or condition of employment.
- An employee's submission to or rejection of the behavior is used as a basis for any employment decision.
- The conduct creates a work environment that a reasonable person would find to be so intimidating or hostile that it significantly interferes with the ability to perform the essential functions of the job.

While FEHA legally defines sexual harassment, it is the Department policy that one act of the prohibited behavior or conduct may constitute a violation of this policy. Furthermore, sexual comments, behavior, or conduct, welcomed or unwelcomed, have no place in the work environment and will not be tolerated. Sexual harassment may take different forms, including gender-based harassment of a person of the same sex as the harasser. Some examples of prohibited behavior are:

VERBAL

- Sexual innuendoes, sexual advances, suggestive comments, use of vulgar profane language, wolf whistling, jokes or comments of a sexual nature, sexually suggestive sounds such as sucking noises, sexual propositions, sexual threats, explicit or offensive language in reference to sex or sex related anatomy.

VISUAL

- Sexually suggestive emails, videos or DVDs, pictures, cartoons.
- Leering or staring at a person's breasts, buttocks, or genital area.
- Obscene gestures such as pelvic thrusts, hand gestures that simulate sex acts, obscene gestures with the lips or tongue, simulating groping or touching, use of the middle finger in a threatening or sexual way.

PHYSICAL

- Unwanted physical contact such as touching, patting, stroking, squeezing, pinching, groping, or brushing against someone's body.
- Physical intimidation, bullying, threats, aggressive actions, assault.
- The use of one's body to corner, trap or threaten.

OTHER

- Sexual advances that are welcomed or unwelcomed. This may include, but is not limited to, sexual conduct that started in a reciprocal manner but is continued by one party after the relationship has been terminated by the other.
- Actions or omissions affecting terms and conditions of employment (e.g. shift changes) for sexually based reasons. This may include situations where a third party receives less favorable treatment because another has acquiesced to sexual advances.
- Implied or actual withholding of support for appointment, promotion, transfer or changes in assignment for sexually based reasons.
- Suggestion that a poor performance report will be prepared if requests for sexual favors are not met.

- Threats or acts of retaliation (including adverse employment actions such as rejection on probation and discipline) against an employee who has rebuffed sexual advances.

[\(see Next Section\)](#)

[\(see Handbook Table of Contents\)](#)

[\(see Forms and Form Samples\)](#)